HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 892/01 (S/S)

Surender Singh Bisht

vs

State of Uttaranchal others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 22-02-2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 892(S/S) OF 2001

Surendra Singh Bisht,
Aged about 43 years,
Son of late Chandan Singh,
Resident of C/o Virendra Bhandari,
C.I.T.U. Office, Local Bus Stand,
District Dehradun. .....Petitioner.

Versus

1. The State of Uttaranchal & others.
   through the Secretary, Home Department, Government of Uttaranchal, civil Secretariat.
2. The Deputy Inspector General of Police,
   Garhwal Range, Dehradun.
3. The Superintendent of Police,
   Tehri Garhwal. .....Respondents.

Sri M.C. Pant, Advocate, for the petitioner.
Learned Standing Counsel for the State.

Dated:22.02.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 30.03.2000 passed by the Deputy Inspector General of Police, Garhwal Range, Dehradun as contained in Annexure No. 2.

Briefly stated, the petitioner was appointed as Constable in the Police Department and he was dismissed from the service for being absent from the duty. He filed a departmental appeal and the same was dismissed on the ground of delay.

The State has filed a counter affidavit, where in paragraph 6, it has been stated that the appeal was rejected as time barred.

Learned counsel for the petitioner has submitted that the appeal has not been considered on merits.

The Apex Court in ***(2001) 8 SCC 151, M.S. Grewal Vs. Deep Chand Sood*** has held that the a case should not be rejected only on the ground of technicalities. The relevant observations are quoted below:-

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In ***N. Balakrishnan Vs. M. Krishnamurthy, 1998 S.C.F.B. and Rent Cases Pages 427,*** It has been held that law of limitation is founded in public policy on 'the maxim of interest reipublicae up sit finis litium' i.e. fal the general welfare, it has been held as under:-

> *"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."*
>
> *"Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury*

so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life spen must be fixed for each remedy. Unending Period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

"It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation."

In all the aforesaid cases, the Apex Court has observed that there should not be dismissal of the case on the ground of delay. The hearing of the lis being mandatory, one should not be deprived of hearing the matter on merits.

Relying upon the cases of ***R.v. Camborane Justices All England Law Reports (1954) 2 850, 855,*** it has been held in ***International Airports Authority of India Vs. K.D. Bali (1988) 2 SCC 360*** as under:-

"While indorsing and fully maintaining the integrity of the principal 'justice should not only be done, but should manifestly be seen to be done', it is important to remember that the principle should not be done than it should in fact be done."

Law Lexicon defines 'justice' as under:-

"Justitia est constans et perpetua voluntas just suum cuique tribuendi: justice is the constant and perpetual disposition or will of giving to every man his right"

The respondents are directed to hear the departmental appeal filed by the petitioner on merits. The technicalities and law will not come in the way of dispensation of justice. In view of the aforesaid facts and circumstances, the order dated 30th March, 2000 dismissing the appeal on the ground of delay is quashed.

Writ petition is allowed. A writ of certiorari is issued quashing the order-dated 30.03.2000 (Annexure No. 2) No. order as to costs.

(Rajesh Tandon, J.)

22.o2.2006

Rathour